

# The State of South Carolina



## Office of the Attorney General

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March 3, 1987

The Honorable Thomas E. Smith, Jr.  
Senator, District No. 30  
402 Gressette Building  
Columbia, South Carolina 29202

Dear Senator Smith:

By your letter of February 24, 1987, you have advised that the name of an individual serving on Horry County Council will be submitted to Governor Campbell for appointment as a magistrate. Upon his appointment, the individual will resign from service on council. You have asked about the proper method to fill the resulting vacancy.

Section 4-9-90, Code of Laws of South Carolina (1976, as revised), provides in pertinent part:

Members of the governing body of the county shall be elected in the general election for terms of two years or four years as the General Assembly may determine for each county commencing on the second of January next following their election. Vacancies on the governing body shall be filled in the manner of original election for the unexpired terms in the next general election after the vacancy occurs or by special election if the vacancy occurs one hundred eighty days or more prior to the next general election.

The individual in question was elected to his present office in the general election of November 1984 to serve a four-year term. Because more than 180 days would remain before the

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next general election, the individual's successor would be selected in a special election. See also Op. Atty. Gen. dated November 15, 1983, enclosed.

The procedure to be followed in scheduling such special election is specified in Section 7-13-190(B) of the Code, which provides:

In partisan elections, the parties shall open filing for the office at noon on the third Friday after the vacancy occurs for a period to close ten days later at noon. A primary must be held on the eleventh Tuesday after the vacancy occurs. A runoff primary must be held on the thirteenth Tuesday after the vacancy occurs. The special election must be on the eighteenth Tuesday after the vacancy occurs. If the filing period closes on a state holiday, the filing must be held open through the succeeding weekday. If the date for an election falls on a state holiday, it must be set for the next succeeding Tuesday.

This statute is applicable since the vacancy to be filled would occur by reason of a resignation and Section 4-9-90 of the Code requires an election to fill the vacancy. This statute supersedes the timetable set forth in the enclosed prior opinion.

We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if you should need clarification or additional assistance.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:lm

Enclosure

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions